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C (TVM)4 - OA 1909/2023/2024047304



2024047304

**Priority : Urgent**

Dated : 18-04-2024

From

The Advocate General,  
Kerala

To

THE SECRETARY  
LABOUR & SKILLS (B) DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM 695 001  
(LABOURB.KERALA@GMAIL.COM)

Sir,

Sub:- OA 1909/2023 filed by SRI. SATHEESH CHANDRAN A before the Hon'ble KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM BENCH - Copy of the Final Order forwarding of - reg.

- Ref :-
1. GOVT LETTER NO B2/229/2023/LBRD DATED 14-11-2023 OF SECRETARY, LABOUR AND SKILLS DEPARTMENT, LABOUR (B) DEPARTMENT, GOVERNMENT SECRETARIAT
  2. DFB/2916/2023-E1 DATED 06-01-2024 OF DIRECTOR OF FACTORIES & BOILERS, FACTORIES & BOILERS, DIRECTORATE OF FACTORIES & BOILERS, THIRUVANANTHAPURAM
  3. LETTER NO. JDKLM/IFB/TVM/303/2023-A DATED 03-01-2024 OF INSPECTOR OF FACTORIES & BOILERS GR I, FACTORIES & BOILERS, INSPECTOR OF FACTORIES & BOILERS GRADE.I THIRUVANANTHAPURAM

With reference to the above,I am to forward herewith a copy of final order dated 8.4.2024 in this case for information & necessary action.

Yours faithfully,

Sd/-

ANILKUMAR G (353787)

Under Secretary - XII

Phone : 04712573057

For ADVOCATE GENERAL

Enclosure :-

Judgement dated 08-04-2024

Copy to:-

1. THE DIRECTOR OF FACTORIES & BOILERS  
DIRECTORATE OF FACTORIES & BOILERS, KUMARAPURAM, ,MEDICAL COLLEGE P O, THIRUVANANTHAPURAM  
DISTRICT, PIN 695 011. (EMAIL DIRECTORATE.FAB@KERALA.GOV.IN)
2. THE INSPECTOR OF FACTORIES & BOILERS GR I  
OFFICE OF THE INSPECTOR OF FACTORIES & BOILERS GRADE.I THIRUVANANTHAPURAM, VASANTHAM TOWER,  
PEROORKKADA P.O., THIRUVANANTHAPURAM DISTRICT, 695 005. (EMAIL IFBTVM.FAB@KERALA.GOV.IN)

Approved for issue

Section Officer



IN THE KERALA ADMINISTRATIVE TRIBUNAL AT  
THIRUVANANTHAPURAM

Present:

The Hon'ble Mrs. M R Sreeletha, Judicial Member  
&  
The Hon'ble Mr. P K Kesavan, Administrative Member

Dated this the 8th of April 2024

OA-1909/2023

**Applicant(s):**

- 1) A Satheesh Chandran, aged 48 years, S/o Ayyappan Nair,,,Additional Inspector of Factories (Higher Grade), presently working at the Office of the Additional Inspector of Factories (Neyyattinkara Division), 3rd Floor, Vasantham Towers, Peroorkada P O, Thiruvananthapuram-695005,,resident of Nandanam, Kottappuram, Kollode P O.,Thiruvananthapuram,Kerala.- 695571

By Advs. FATHAHUDEEN M & THALIMA NOUSHAD

**Respondent(s):**

- 1) State of Kerala, represented by the Secretary to Government, Labour and Skills Department, Government Secretariat, Thiruvananthapuram-695001,, Kerala
- 2) The Director of Factories and Boilers, Directorate of Factories and Boilers, Suraksha Bhavan, Kumarapuram Kännammoola Road, Kumarapuram, Thiruvananthapuram-695011,, Kerala
- 3) Inspector of Factories and Boilers, Office of the Inspector of Factories and Boilers, Peroorkada P O, Thiruvananthapuram-695005.,, Kerala
- 4) Smt. Navarose Beena, Additional Inspector of Factories, presently working at the Office of the Additional Inspector of Factories(Thiruvananthapuram Division), 3rd Floor, Vasantham Towers, Peroorkada P O, Thiruvananthapuram-695005.,, Kerala

- 5) Smt. Babitha.G.Menon, Additional Inspector of Factories, Office of the Additional Factory Inspector, Kottayam South - 686002 (now under order of transfer to Office of the Additional Factory Inspector, Kollam - 691001,, Kerala
- 6) Smt. Kshema.S, Additional Inspector of Factories, Office of the Additional Factory Inspector, Aluva, Ernakulam - 683101 (now under order of transfer to Office of the Additional Inspector of Factories, Thiruvananthapuram, 3rd Floor, Vasantham Towers, Peroorkada P.O, Thiruvananthapuram - 695005,, Kerala
- 7) Smt. Simi.H, Additional Inspector of Factories, Office of the Additional Factory Inspector, Irinjalakuda, Thrissur - 680121 (now under order of transfer to Office of the Additional Factory Inspector, Aluva, Ernakulam - 683101),[Additional Respondents 5 to 7 are impleaded as per order dated 26.10.2023 in MA.No.1994/2023 in OA.No.1909/2023], Kerala



Sri, Praveen C P, Government Pleader for Respondents 1 to 3, Adv. Ajith S Nair for respondent 4, Advs. Shameena Salahudden, Abhijith D for respondents 5,6,7

This Original Application having been finally heard on 8th of April 2024, the Tribunal on the same day passed the following:



**M. R. SREELETHA, JUDICIAL MEMBER**  
**&**  
**P.K. KESAVAN , ADMINISTRATIVE MEMBER**

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**OA.No. 1909 of 2023**  
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**Dated this the 8<sup>th</sup> day of April, 2024**

**ORDER**

**M. R. Sreeletha, Judicial Member :**

The applicant's transfer from Neyyattinkara to Irinjalakuda is under challenge in this Original Application. The applicant is an Additional Inspector of Factories under the Factories and Boilers Department.

2. The applicant contends that while he was working in Ernakulam Division he was transferred to Neyyattinkara by order dated 17.06.2019 as part of general transfer proceedings. In 2021 an attempt was made to transfer the applicant to Ernakulam even before completing 2 years service in Neyyattinkara. It was challenged before this Tribunal, and this Tribunal by Annexure-A4 had directed the Government to consider the grievance. By the order issued in compliance, the applicant was retained at Neyyattinkara as Additional Inspector of Factories. It is the case of the applicant that the 2<sup>nd</sup> respondent is having grudge towards the applicant and therefore he is

*(Handwritten signature)*

now transferred to Irinjalakkda a more distant place, to take vengeance upon the applicant.

3. The applicant has completed 4 years of service in the present station. By Annexure-A2 order of transfer, the 4<sup>th</sup> respondent was posted to his place and according to him, the 4<sup>th</sup> respondent had not joined pursuant to Annexure-A2 order. The applicant was on factory inspection duty on 26.10.2023 and the transfer of charge could be effected only as per Appendix III of Part I KSR. The applicant being head of office as well as a Gazatted Officer, handing over and taking over of charge could be effected only in the presence of the relieving officer and the relieved officer. As he was on factory inspection, the applicant contends that the taking of charge had not come into effect.

4. Applicant has raised the following grounds against Annexure-A2 transfer order. The reading of Annexure-A2 shows that it was issued considering the request of respondents 5,6 and 7 who are Sl. Nos 1,2 and 4. No administrative exigency or any other reasons are shown in Annexure-A2 for effecting transfer. In spite of the existence of norms governing general transfer, no applications were invited for general transfer in the year 2023. The applicant's case is that he could be transferred out of Neyyattinkara only as part of general transfer proceedings as mandated in GO(P) No. 3/2017/P&ARD dated

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25.02.2017, through online method. Since the applicant had not completed three years service in the present station, the applicant had not filed application for general transfer in response to Annexure-A3 issued on 28.02.2022. In 2023, no applications were invited for general transfer. According to him, the transfer was effected in a highly arbitrary fashion. In order to accommodate the respondents in stations which are convenient and comfortable to them, the applicant was transferred out of Neyyattinkara without even giving him a chance to opt for a convenient station. He also has a case that even a fresh promotee is accommodated in Kottayam while transferring the applicant to a distant place, Irinjalakuda. According to him, there were no reasons for deviating from the general transfer norms and the respondents have not referred to any administrative reason for effecting the transfer of the applicant in Annexure-A2. Had there been a draft list of transfer, the applicant could have got a chance to make options. So the applicant was ousted from the present post in an unceremonial manner as was done by the 2<sup>nd</sup> respondent in 2021.

5. The official respondents 1 and 2 submit that online general transfer through SPARK was temporarily shutdown due to technical issues. The 2<sup>nd</sup> respondent had received 3 requests for transfer in the year 2023 from Additional Inspectors of Factories. Both respondents 5 & 6 had requested transfer to Kollam office and both of them applied

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on compassionate grounds. The 5<sup>th</sup> respondent had been working at Kottayam since 2019, whereas the 6<sup>th</sup> respondent was working in Aluva since 2020. As there was only one vacancy at Kollam, the 5<sup>th</sup> respondent was posted there and the 6<sup>th</sup> respondent was accommodated at Thiruvananthapuram.

6. The 4<sup>th</sup> respondent and the applicant are working in the office of the Additional Inspector Thiruvananthapuram and Neyyattinkara respectively and they have completed more than 4 years of service in Thiruvananthapuram District. The 4<sup>th</sup> respondent is retiring on superannuation on 30.6.2025 and her home station is Thiruvananthapuram District. Following general transfer norms, the 4<sup>th</sup> respondent was accommodated in Thiruvananthapuram District at Neyyattinkara. Since the applicant is having 8 years to retire, he was transferred out of Neyyattinkara. The offices of both the applicant as well as 4<sup>th</sup> respondent are housed on the very same floor of the same building. On transfer, the 6<sup>th</sup> respondent who was transferred from Aluva to Thiruvananthapuram came to Thiruvananthapuram office for taking charge of the office on 26.10.2023. The 4<sup>th</sup> respondent who was transferred from Thiruvananthapuram by the same order handed over the charge of Thiruvananthapuram office to the 6<sup>th</sup> respondent on that date. As the 2 offices of Thiruvananthapuram and Neyyattinkara are functioning in the same room, the 4<sup>th</sup> respondent could not claim



*(Signature)*






joining time and she had to take charge of Neyyattinkara office on the same day, ie. 26.10.2023 itself. The applicant was informed by the 4<sup>th</sup> respondent to come to the office for handing over charge of Neyyattinkara office. As the applicant did not turn up, situation was informed to the 2<sup>nd</sup> respondent and there upon the 2<sup>nd</sup> respondent issued Annexure-R2(d) enabling the 4<sup>th</sup> respondent to assume the charge of Neyyattinkara office. Thus by Annexure-R2(d) proceedings, the 4<sup>th</sup> respondent assumed the charge of Neyyattinkara office. Otherwise a break in service would have occurred to the 4<sup>th</sup> respondent. The 2<sup>nd</sup> respondent has a specific case that the applicant had gone for inspecting a factory even after coming to know about his transfer through official E-mail and Website. No urgent factory inspection was conducted on 26.10.2023 and no emergencies had occurred at Neyyattinkara division and the applicant could have very well attended office, canceling his factory inspection. It is contended that as the order of transfer was published in the Website it was officially communicated to the applicant. The applicant had intentionally left the place in order to avoid the taking of charge by the 4<sup>th</sup> respondent.

7. In the reply statement filed by then, the respondents 1 & 2 also have a case that the 2<sup>nd</sup> respondent had found that the applicant was not working efficiently at Neyyattinkara office and due to his inefficiency huge arrears of revenue collection was pending in

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Neyyattinkara office as is revealed by Annexure-R2(e). The pending arrears in Neyyattinkara office is the highest in Kollam region. The applicant was transferred to Irinjalakuda as there is little amount of pending arrears of revenue collection. In nutshell, the 2<sup>nd</sup> respondent's stand is that the applicant had completed more than 4 years in Neyyattinkara and he had no right to be retained at Neyyattinkara. He was an inefficient officer and his inefficiency had resulted in large arrears of revenue collection. The 4<sup>th</sup> respondent is an efficient officer and senior to the applicant who can manage the pending arrears in Neyyattinkara office. Reply Statement also refers to an oral complaint from the office of the Hon'ble Minister against the applicant. There were allegations of accepting bribe from bakery units of the factory and departmental actions were also initiated after conducting an enquiry. It was considering allegations against the applicant that the applicant was transferred in 2021. Reference is also made to certain earlier allegations of accepting bribe which had occurred while the applicant was working at Thalassery Division.

8. The respondents 4,5,6 & 7 have also filed reply statement. The 5<sup>th</sup> respondent has narrated the compassionate grounds which compels her to seek a transfer to Kollam. Her daughter is suffering from Brain and Spinal cord related disorder and is undergoing treatment at Ananthapuri Hospital and Sree Chitra Tirunal Institute for

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Medical Sciences. The husband of the applicant is working as Guard in Southern Railway and he has to travel regularly as part of his employment. It was on the above grounds that the 5<sup>th</sup> respondent had applied for a transfer to Kollam. At the time of request she had completed 4 years service at Kottayam District.

9. The 6<sup>th</sup> respondent in her reply statement points out the compassionate grounds on which she sought a transfer to Kollam. Husband of the 6<sup>th</sup> respondent is suffering from Polycythemia (clotting of blood) and is undergoing treatment at KIMS Hospital Trivandrum. Mother of the 6<sup>th</sup> respondent aged 78 years is under the care of the 6<sup>th</sup> respondent. She is due to retire on 31.05.2026. It was pointing out the above compassionate grounds, the 6<sup>th</sup> respondent had sought transfer.

10. The 7<sup>th</sup> respondent who is transferred from Irinjalakuda to Aluva contends that she is a resident of Ernakulam and she was working about 70 km away from her residence. She had to take 4 buses to reach her office and she had 2 children aged 19 years and 13 years. The 7<sup>th</sup> respondent had requested for a transfer and she was accommodated at Aluva considering her request.

11. In the reply statement filed by the 4<sup>th</sup> respondent she contends that she is due to retire from service on 30.6.2025. Her native home town is Thiruvananthapuram and she is the senior most

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Additional Factory Inspector in the department with Higher Grade. It was considering the fact that the 4<sup>th</sup> respondent is having only less than 2 years of service for superannuation, the 4<sup>th</sup> respondent was accommodated at Thiruvananthapuram. The 6<sup>th</sup> respondent who was transferred from Aluva to Thiruvananthapuram reported for taking charge on 26.10.2023 and the 4<sup>th</sup> respondent handed over charge to 6<sup>th</sup> respondent. As the 4<sup>th</sup> respondent has no joining time she was bound to take charge on the date of relieving itself. As the applicant was not present in the office she had reported the matter to higher authorities and the 2<sup>nd</sup> respondent issued orders providing charge to the 4<sup>th</sup> respondent at Neyyattinkara office.


12. Heard both sides.

13. The counsel for the applicant places heavy reliance on the judgment of the Hon'ble High Court in OP(KAT) No. 3 /2021 and contends that the transfer norms could not be viewed lightly by the competent authority concerned and the transfer should be subjected to judicial review if it is colored and initiated by malafide. On behalf of the applicant he vehemently contends that the present order of transfer is clearly a malafide exercise of power. It was in order to wreck vengeance on the applicant that the 2<sup>nd</sup> respondent had transferred him to Irinjalakkuda. The arbitrary exercise of power by the

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2<sup>nd</sup> respondent was interdicted by this Tribunal by Annexure-A4 order and the same action is repeated by the present transfer in his case. On the other hand, the learned Government Pleader places reliance on judgment of the Hon'ble Supreme Court reported in (2024 KHC 6135) and contends that judicial interference is not warranted unless there are clear pleadings regarding malafides or violation of statutory provision. The counsel for the 4<sup>th</sup> respondent vehemently contends that the applicant had absented himself from the office premises with clear intention of avoiding handing over of charge. He was officially communicated of the transfer order and in spite of that he had gone for factory inspection. The allegation against malafide is not specific. The applicant has alleged the infraction of the procedure, but he has failed to show any prejudice that has occurred to the applicant. The other respondents 5 & 6 have highlighted the compassionate grounds on which they are transferred. The applicant attacks the order of transfer mainly on the ground that it is issued in violation of norms that govern general transfer. It is contended that no applications were invited for effecting general transfer which denied him of his right to exercise option. The official respondents have explained the reasons for not issuing orders of general transfer. There were certain technical defects which necessitated issuance of orders as done in the present case. Though the applicant has raised serious allegations of malafide,



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those allegations are not specific and the persons concerned are not impleaded in the personal capacity. So the allegations of the malafide cannot be given any weight. Though it is contended that the applicant was transferred out in order to wreck vengeance, the applicant has failed to point out any cause for such vengeance and there is absolutely no specific averments on these aspects. The applicant admits that he has completed more than 4 years in the present station. Therefore now he cannot have any right to be retained in the present station, especially when he has more than 8 years to retire. The earlier transfer order was cancelled by the Government on cogent reasons which are totally absent in the present case. At that time the applicant had not completed 3 years in the station and there was a total violation of procedural formalities in the handing over of charge. It was in the above background that this Tribunal directed the Government to consider his case. But in the present case no such ground is made out for interfering with the order of transfer. The transfer of 4<sup>th</sup> respondent was considering the fact that she is on the verge of retirement. The reasons for transferring respondents 5 & 6 and accommodating them in Kollam and Thiruvananthapuram respectively is explained by the official respondents in their affidavits. The 7<sup>th</sup> respondent had to be accommodated in Ernakulam considering her long service at irinjalakuda and in turn the applicant was



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accommodated at Irinjalakuda. In the above facts and circumstances the impugned order of transfer is upheld as no ground is made out for intervention of this Tribunal.

The Original Application is dismissed as devoid of merit.



Sd/-  
M.R.Sreeletha, Judicial Member

Sd/-  
P.K.Kesavan, Administrative Member

BVV/-

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Officer in charge of copying branch

APPENDIX



OA-1909/2023

APPLICANT'S ANNEXURES:

- Annexure A1- True copy of the order No. E1/176/2019/(2) F&B dated 17.06.2019 of the 2nd Respondent .
- Annexure A2- True copy of the order No. DF&B/516/2023/E1 dated 21.10.2023 of the 2nd Respondent .
- Annexure A3- True copy of the circular No. 08/2022 dated 28.02.2022 of the 2nd Respondent .
- Annexure A4- True copy of the final order dated 18.08.2021 in OA No. 1124/2021 of the Honourable KAT Thiruvananthapuram.
- Annexure A5- True copy of GO (Rt) No. 1311/2021/Labour dated 15.11.2021 of Govt. of Kerala.
- Annexure A6- True copy of the order NO. E1-5089/2021/F&B dated 29.11.2021 of the 2nd Respondent .

RESPONDENT'S ANNEXURES:

- Annexure R2(a)- True copy of transfer request .



Annexure R2(b)- True copy of Proceedings of the Director of Factories and Boilers Department in Order No. DF&B/516/2023/E1 dated 21.10.2023.

Annexure R2(c)- True copy of Letter No. JDKLM/AIF/TVM/124/2023 - A dated 26.10.2023 of the Additional Inspector of Factories addressed to the Director of Factories and Boilers, Thiruvananthapuram.

Annexure R2(d)- True copy of Proceedings of the Director of Factories and Boilers in Order No. DFB/516/2023-E1 dated 26.10.2023.

Annexure R2(e)- True copy of DCB Statement .

Annexure R2(f)- True copy of DCB Statement for the month of September 2022-2023.

Annexure R2(g)- True copy of Proceedings of the Director of Factories and Boilers in Order No. DFB/516/2023/E1 dated 19.07.2023.

Annexure R2(h)- True copy of hearing and confession dated 25.09.2019.

Annexure R2(i)- True copy of Letter No. 171/2021/AIF/N dated 26.08.2021 of the Additional Inspector of Factories, Neyyattinkara Division addressed to the Director of Factories and Boilers, Thiruvananthapuram along with List of newly found unregistered factories .

Annexure R2(j)- True copy of Report along with list of unregistered factories impleaded during 2019-21.

Annexure R2(k)- True copy of Charge Memo in No. E1/5414/2021/F&B dated 05.09.2022 along with Statement of allegation .



Annexure  
R2(l)-

True copy of Proceedings of the Director of Factories and Boilers in Order No. E1-5414/2022/F&B dated 11.01.2023.

Annexure  
R2(m)-

True copy of Application for General Transfer dated 20.01.2021 of Ajith Kumar K K .

Annexure  
R5(a)-

True copy of the treatment certificate dated 18.11.2015 of the daughter of the 5th Respondent .

Annexure  
R5(b)-

True copy of the Clinical Note dated 03.07.2023 of the daughter of the 5th Respondent .

Annexure  
R5(c)-

True copy of the representation dated 20.02.2023 made by the 5th Respondent before the 2nd Respondent .

Annexure  
R6(a)-

True copy of the representation made by the 6th Respondent before the 2nd Respondent (No. 150/2023 dated 30.05.2023).

Annexure  
R7(a)-

True copy of the representation dated 20.04.2022 made by the 7th Respondent before the 2nd Respondent No. 122/2022.

Annexure  
R7(b)-

True copy of the representation dated 20.06.2023 made by the 7th Respondent before the 2nd Respondent No. 183/2023.

